



No. S1710393  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**

**AND**

**IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,  
S.B.C. 2002, c. 57, AS AMENDED**

**AND**

**IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,  
R.S.C. 1985, c. C-44, AS AMENDED**

**AND**

**IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF  
ALL CANADIAN INVESTMENT CORPORATION**

**NOTICE OF APPLICATION**

**Name of Applicant:** The Petitioner

**To:** The Service List

TAKE NOTICE that an application will be made by the Petitioner to the presiding Judge or Master at the Courthouse at 800 Smithe Street, Vancouver, British Columbia, on Wednesday March 7, 2018 at 9:45 a.m. for the Orders set out in Part 1 below.

**PART 1: ORDERS SOUGHT**

1. An order extending the stay of proceedings provided for in the order pronounced by this Honourable Court on December 5, 2017 to April 11, 2018.
2. Such further and other relief that this Honourable Court deems just.

**PART 2: FACTUAL BASIS**

3. On November 10, 2017, on the application of the Petitioner, the Honourable Madam Justice Adair made the initial order in these proceedings (the "**Initial Order**"), granting the Petitioner protection from its creditors pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").
4. The Initial Order provided for a stay of proceedings against the Petitioner until December 9, 2017.

5. On December 5, 2017, on the application of the Petitioner, the Honourable Mr. Justice Silverman made an order (the "**December 2017 Order**") extending the stay of proceedings provided for in the Initial Order to March 9, 2018.

6. Pursuant to the December 2017 Order, the stay of proceedings expires on March 9, 2018 (the "**Stay Period**").

7. On January 24, 2018 the sale of certain Real Property owned by the Petitioner and the settlement of three loans in the Loan Portfolio was approved by Order of the Honourable Mr. Justice Pearlman (the "**Approval Order**").

8. Subsequent to the Approval Order and as a result of a conflict of interest which it discovered, the Petitioner's original counsel determined that it was no longer able to act in the proceedings.

9. The Petitioner was required to locate and retain new counsel and on February 15, 2018, the Petitioner filed a Notice of Change of Lawyer in these proceedings, appointing Watson Goepel LLP as legal counsel.

10. The Petitioner seeks an extension of the Stay Period for 33 days, to April 11, 2018.

a) 11. This extension is sought in order to allow further time for the Petitioner develop a plan of compromise and arrangement (a "**Plan**") to present to its stakeholders. Specifically, this extension would allow the Petitioner to:

- a) review its records, assess options and prepare materials for use in these proceedings;
- b) assist its new legal counsel in reviewing and preparing materials in these proceedings;
- c) secure updated appraisals for the properties related to the Loan Portfolio;
- d) finalize security reviews with respect to the Loan Portfolio;
- e) institute recovery proceedings;
- f) develop a claims process for court review and implementation;
- g) develop the Plan to present to its stakeholders that would involve a fair, controlled and orderly wind-down of its business operations;
- h) work with the Monitor in discussions with the Borrowers and in the development of the Plan; and
- i) obtain support from its creditors and hold a meeting to vote on the Plan.

**Background**

12. The Petitioner is a mortgage investment corporation (“**MIC**”) which has been in business since 1998. Its business is to provide loans to owners and developers of residential, commercial, office and industrial real estate properties (the “**Borrowers**”), which are secured by registered, unregistered and equitable mortgages on the properties (the “**Mortgage Loans**”). In addition, the Petitioner makes other loans and investments from time to time that may be unsecured (the “**Other Loans**”, and together with the Mortgage Loans, hereinafter referred to as the “**Loans**”).

13. The Petitioner’s primary asset is its portfolio of Loans (the “**Loan Portfolio**”).

14. In addition to the Loan Portfolio, the Petitioner owns certain real property (the “**Real Property**”). Since the date of filing one of the properties has been sold in accordance with the Approval Order.

15. The Petitioner’s primary objective as a MIC is to provide its preferred shareholders with dividend payments. The Petitioner has issued a total of 37,277 preferred shares and 15,647 warrants, for an aggregate capital of approximately \$37,277,000.

16. From 2005 to 2014, shareholders received between 6.25% to 8% annual returns on their Preferred Shares. Dividends to shareholders were decreased to 2.75% in 2015 and to 1.0% in 2016 and the Petitioner did not pay any dividends in 2017.

17. The Petitioner does not have any employees and is managed by ACIC Financial Development Inc. (“**AFDI**”), which receives an annual management fee equal to the Petitioner’s assets and 15% of the Petitioner’s gross annual revenues that is payable on a monthly basis. AFDI has agreed to reduce its management fee to \$50,000 per months during the CCAA proceedings.

18. The reasons for the Petitioner’s financial difficulties which led it to file for protection under the CCAA is described in the Petition and include the following:

- a) the high level of development activity in the Lower Mainland which has led to excessive delays in construction and development, particularly with respect to obtaining permits from the municipalities.
- b) construction delays have resulted in delays on timely interest payments and payouts of the Loans by Borrowers. This has negatively affected the Petitioner’s cash flow and its ability to meet its obligations to its creditors, including to its preferred shareholders.
- c) the Petitioner has been unsuccessful in raising additional funds from investors as there has been a general decline in investor interest in MICs.
- d) The Petitioner’s ability to raise additional capital was also hindered by the sudden resignation of its auditors, BDO Canada LLP (“**BDO**”) in March 2016 without advance warning and without completing the Petitioner’s audited

financial statement for 2015 or filing the Petitioner's tax return. Consequently, the Petitioner was unable to provide audited financial statements to complete an offering memorandum.

- e) The Petitioner resorted to borrowing funds from third party financiers in order to advance loans and meet loan commitment obligations to the Borrowers. Such loans had high interest rates which caused further strain to the Petitioner's cash flow. Due to the Petitioner's default on a loan from Fisgard Capital Corporation ("Fisgard"), Fisgard commenced foreclosure proceedings against the Petitioner.
- f) The Petitioner also borrowed funds through the issuance of debentures (the "Debentures"). The Debentures have now either matured or the holders of the Debentures have made redemption requests (the "Debenture Redemption Notices").

19. The foregoing resulted in a decrease in cash flow and ultimately in dividend payments to the preferred shareholders in 2015 and 2016. The Petitioner was unable to make any dividend payments at all to the preferred shareholders in 2017. This has led to a significant number of the preferred shareholders sending Equity Redemption Notices.

20. To date, of the \$37,277,000 capital in preferred shares issued, the total amount of Equity Redemption Notices that have been received is approximately \$24,229,000.

21. Prior to filing three actions were commenced in the British Columbia Supreme Court by preferred shareholders against the Petitioner and others, including AFDI, Donald Bergman and Wayne Blair (both officers of the Petitioner) with respect to their shares and Equity Redemption Notices.

22. As at the date of filing the Petitioner had a total of approximately \$29,914,702 in claims against it as follows:

- a) \$1,785,702 in secured claims, a portion of which has been reduced through payments received through the Real Property sale and settlements which were the subject of the Approval Order;
- b) approximately \$3,602,634.65 in unsecured claims; and
- c) \$24,229,000 in equity claims arising from the Equity Redemption Notices received from its preferred shareholders.

23. As at the date of filing the Petitioner had issued a total of 37,277 preferred shares and 15,647 warrants, for total capital of approximately \$37,000,277. The equity claims identified above arise out of that capital.

24. The Petitioner's purpose for seeking CCAA protection is to stabilize its operations and develop a plan of compromise or arrangement (a "Plan") to present to its stakeholders as part of

these CCAA proceedings that would involve a fair, controlled and orderly wind-down of its business operations, for the benefit of its stakeholders.

**The Petitioner's Activities Since the December 2017 Order**

25. Since of the date of the December 2017 Order, the Petitioner has continued to manage the daily operations of its business. In addition, the Petitioner has:

- a) worked cooperatively with the Monitor to prepare and update cash flow statements and provide the Monitor with information regarding the Loan Portfolio and the Real Property;
- b) communicated with Borrowers in an effort to expedite payment of both loan interest and principal;
- c) communicated with stakeholders in the CCAA proceedings;
- d) arranged for sale and court approval of certain of ACIC's real property located at 13562 Lee Road, Garden Bay, British Columbia to Clayton Jay Satchwell and Sandra Margaret Satchwell (the "Garden Bay Sale");
- e) arranged for settlement and court approval of certain loan repayment claims of Seamount Investments Ltd. and Joe Mendes, creditors of the Petitioner;
- f) contacted potential lenders that could provide re-financing or debtor-in-possession ("DIP") lending to payout existing lenders on more favourable terms;
- g) commenced a Loan Portfolio and Security Review;
- h) initiated steps to institute collection proceedings;
- i) considered and discussed with the Monitor potential restructuring plans to maximize the recovery to all stakeholders;
- j) commissioned updated appraisal reports for properties in the Loan Portfolio; and
- k) continued negotiations with Borrowers regarding additional security options

26. Prior to the December 2017 Order, the Petitioner, with the assistance of the Monitor, prepared cash flow projections (the "2017 Cash Flow Statement") to the end of March 2018, as set out in the Monitor's First Report to Court dated November 30, 2017.

27. Since the December 2017 Order, the Petitioner has periodically reviewed its financial affairs to ensure compliance with the 2017 Cash Flow Statement and provided weekly updates to the Monitor.

28. The Petitioner believes that given a reasonable period of time to realize on its Loan Portfolio, it will have greater value to stakeholders, as opposed to an immediate "as is" liquidation of the Loan Portfolio.
29. The Petitioner's plan will likely involve an *en bloc* sale, or partial sale, of the Loan Portfolio and the Real Property to pay its stakeholders.
30. The Petitioner requires further time to work with the Monitor and the Borrowers to find prospective purchasers, evaluate the value of the Loan Portfolio and develop a Plan to present to its creditors.
31. The Petitioner will continue to work with the Monitor to attempt to reduce its overhead costs.
32. There is little to no prejudice to any stakeholders in the event the Stay Period is extended.
33. The Monitor has been fully apprised of the Petitioner's intention to apply for an extension of the Stay Period to April 11, 2018.
34. The Petitioner has acted, and continues to act, in good faith and with due diligence in these CCAA proceedings.

### **PART 3: LEGAL BASIS**

35. Pursuant to s. 11 of the CCAA, the Court may make any order that it considers appropriate.
36. Pursuant to ss. 11.02(2) and (3) of the CCAA, the Court may extend a stay of proceedings granted in an Initial Order when:
  - a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
  - b) in the case of an order under subsection (2) [extension of a stay], the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.
37. An extension of a stay should only be granted in furtherance of the CCAA's fundamental purpose of facilitating a plan of arrangement between debtor companies and their creditors.

*Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp.*, 2008 BCCA 327

38. In addition to the fundamental purpose of the extension, other factors to be considered on an application for a stay include:
  - a) the debtor's progress during the previous stay period toward a restructuring;
  - b) whether the creditors will be prejudiced if the court grants the extension; and

- c) the comparative prejudice to the debtor, creditors and other stakeholders in not granting the extension.

*Re Worldspan Marine Inc., 2011 BCSC 1758*

39. The CCAA can be used for an orderly wind-down of a company.

*Re Target Canada Co., 2015 ONSC 303 (S.C.J.)*

40. The extension of the Stay Period sought by the Petitioner is appropriate in the circumstances as it is consistent with the purpose of the CCAA and will enable the Petitioner to proceed with its business operations and develop a Plan to be presented to its stakeholders for an orderly wind-down of the company.

41. The Petitioner has acted and continues to act in good faith and with due diligence.

42. There is little to no prejudice to any stakeholders in the event the Stay Period is extended.

43. The Petitioner also rely on Rules 1-3, 4-4, 8-1, 8-5, 22-1 and 22-4 of the *Supreme Court Civil Rules*.

**PART 4: MATERIAL TO BE RELIED ON**

44. The pleadings and materials filed herein;

45. Affidavit #1 of Donald Bergman, made November 7, 2017;

46. Affidavit #2 of Donald Bergman, made November 30, 2017;

47. Affidavit #3 of Donald Bergman, made January 19, 2018; and

48. Affidavit #4 of Donald Bergman, made March 1, 2018;

Such further and other material as counsel may advise and this Honourable Court may allow.

**THE APPLICANT ESTIMATES THAT THE APPLICATION WILL TAKE 20 MINUTES.**

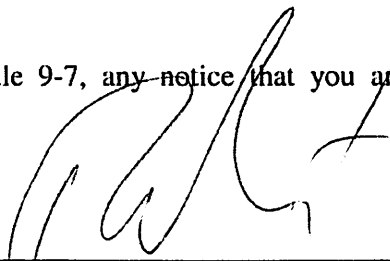
- This matter is within the jurisdiction of a Master.
- This matter is not within the jurisdiction of a Master.

**TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION:** If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application:

- (a) file an Application Response in Form 33;

- (b) file the original of every Affidavit, and of every other document, that:
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding; and
- (c) serve on the Applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of filed Application Response;
  - (ii) a copy of each of the filed Affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: March 1, 2018




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Signature of Lawyer for the Petitioner  
Lawyer: Jeremy D. West

This NOTICE OF APPLICATION is prepared by Jeremy D. West of the firm of **Watson Goepel LLP** whose place of business is 1200 – 1075 West Georgia Street, Vancouver, British Columbia, V6E 3C9.

<b><i>To be completed by the court only:</i></b>	
Order made	
<input type="checkbox"/> in the terms requested in paragraphs _____ of Part 1 of this Notice of Application	
<input type="checkbox"/> with the following variations and additional terms:	
_____	
_____	
_____	
Date: _____	_____
[dd/mmm/yyyy]	Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master



## APPENDIX

*[The following information is provided for data collection purposes only and is of no legal effect.]*

### **THIS APPLICATION INVOLVES THE FOLLOWING:**

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matters concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts